

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Amendment of the Commission's
Rules to Establish New
Personal Communications
Services

)
) Gen Docket No. 90-314
) ET Docket No. 92-100 /

) RM-7140, RM-7175, RM-7617,
) RM-7618, RM-7760, RM-7782,
) RM-7860, RM-7977, RM-7978,
) RM-7979, RM-7980

)
) PP-35 through PP-40, PP-79
) through PP-85
)

COMMENTS
OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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SUMMARY

CTIA supports the Commission's efforts to facilitate expansion and innovation in the provision of wireless communications. To accomplish the Commission's goals, CTIA believes that the Commission should adopt a regulatory structure for PCS which will allow the marketplace to function relatively free of government intrusion. Accordingly, the Commission should adopt a regulatory structure which

- defines PCS broadly so as to permit maximum and efficient utilization of PCS-assigned spectrum;
- permits open entry into the PCS marketplace and declares all interested firms eligible to be PCS licensees;
- allocates 100 MHz of spectrum to be divided among five assignments;
- defines the geographic scope of PCS license areas to parallel the cellular MSA/RSA licensing scheme;
- permits the free transferability of whole or partial PCS interests; and
- uses auctions or, if Congress does not adopt enabling legislation, lotteries for the assignment of PCS licenses.

Technology alone will not ensure the full benefits of a competitive PCS marketplace. Digital technology will greatly increase spectrum capacity and facilitate the introduction of new wireless services, but the incompatibility between digital systems will require cellular carriers to maintain the current

AMPs standard to satisfy the public's legitimate requirements for a truly common air interface. The principles set forth above will best serve the public interest by allowing cellular carriers access to the additional spectrum they need to introduce new wireless services, while providing ubiquitous roaming service and emergency services in times of natural disaster to the ten million cellular customers of today, and millions more in the future.

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COMMENTS
OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA") hereby submits its comments in the above-captioned proceeding to facilitate the advent of personal communications services to the American public.¹ CTIA is the trade association of the cellular industry. Its members include over 90% of the licensees providing cellular service to the United States and Canada. CTIA's membership also includes cellular

¹ Notice of Proposed Rulemaking in Gen. Dkt. No. 90-314, ET Dkt. No. 92-100, 7 F.C.C. Rcd 5676 (1992) (hereinafter, Notice).

equipment manufacturers, support service providers, and others with an interest in the cellular industry. Given the importance of the pending rulemaking to the future of wireless communications, CTIA and its members are vitally interested parties to this proceeding.

I. INTRODUCTION

CTIA strongly supports the Commission's efforts to facilitate expansion and innovation in the provision of wireless communications. There is little doubt that wireless communication is increasingly becoming a critical part of improving and advancing our nation's telecommunications infrastructure. One need only look to the dramatic successes in the introduction of cellular services, in terms of strong and growing consumer demand, continuous technical innovation, and markedly declining costs. The last ten years of cellular growth have not only satisfied mobile users' needs, they have substantially improved overall consumer welfare by making significant contributions to the U.S. domestic economy and providing an important area for U.S. export to the world economy. These successes, in combination with new and additional technological and entrepreneurial approaches to wireless communications in general, promise to reap even more rewards in the future. But fulfillment of this promise can only occur if there is a favorable regulatory environment conducive to the requisite risk-taking and growth. The

Commission has within its authority the ability to help shape this necessary environment in the instant proceeding.

In these comments, CTIA offers its proposals for a regulatory structure that will permit the marketplace to function relatively free of governmental intrusion which could otherwise skew outcomes and disrupt efficiency. This structure has as its fundamental premise the fact that the Commission does not know, and cannot know, what PCS will be. Within the legal limitations imposed upon the Commission (which CTIA believes are in fact minimal), the Commission should strive to avoid predictions or regulations that could skew the outcome that best serves consumers.

If the future of PCS cannot be known at this time, it becomes equally clear that there are a number of other "unknowables," such as how much spectrum should optimally be assigned to each licensee, within what geographic areas PCS should be licensed, or which private transactions between or among telecommunications entities affecting PCS might be pro-competitive or not. Plainly, however, certain decisions must be made now to allow PCS to come to market. For these reasons, CTIA proposes a set of rules that provide for an initial allocation of sufficient spectrum to award at least five licenses and thereafter permit the ready transferability of all or part of the rights attached to such licenses. Under such a scheme, the Commission should establish certain "building blocks" or "modules" that may, with minimal

regulatory interference, be aggregated or disaggregated by PCS providers to design efficient PCS services. This should enable market forces to determine the provision of PCS.

A necessary corollary of this structure is that no potential entrant should be artificially precluded from the PCS "market" -- however that market may ultimately come to be defined. Mergers or acquisitions between "PCS" and "cellular" companies should be examined on a case-by-case basis, in the context of the particular market facts then known or reliably predictable. There is simply no a priori basis upon which to preclude cellular companies from providing PCS. As will be shown, even if one were to assume that PCS and cellular are perfect substitutes, integration may still be efficiency-producing and thus pro-competitive and pro-consumer.

To fully understand the competitive implications of allowing cellular companies' access to PCS-assigned spectrum, CTIA submits an analysis from Dr. Stanley M. Besen, Dr. Robert J. Lerner, and Dr. Jane Murdoch (hereinafter, Besen, et al.) of Charles River Associates, which examines in detail the economic consequences of cellular entry into PCS. The authors conclude that under a variety of assumptions regarding the future evolution of PCS, cellular companies should not be excluded from eligibility. CTIA also submits technical analyses based upon studies performed by Donald Schilling of SCS Mobilecom and LCC Inc. The SCS Mobilecom analysis shows that, given the severe technical constraints on cellular

companies' ability to deploy cellular-assigned spectrum for the provision of PCS, sound policy dictates that cellular companies be eligible to use PCS spectrum.

CTIA also proposes that the actual PCS licensing mechanisms, and thereafter the ongoing regulatory apparatus, should be minimal. CTIA supports the Notice's rejection of comparative hearings, and recommends the use of lotteries until such time as Congress clarifies the Commission's legal authority to auction spectrum. Further, there appears to be little basis for subjecting a new set of services to the burdens and costs of common carrier regulation.

Throughout these comments, CTIA also urges the Commission to consider certain modifications to its regulation of cellular. Regardless of how cellular and PCS services might affect one another, the residuals of a decade-old regulatory scheme when applied to a dynamically changing environment pose competitive and efficiency costs which should be eliminated. Thus, for example, if PCS is to be treated as private carriage, then cellular service providers should also be treated as private carriers.

CTIA believes that its members can provide substantial contributions to the expansion and evolution of wireless communications. The cellular industry is poised to capture readily identifiable economies in the integrated provision of wireless services. The Commission should ensure that its

regulatory scheme for PCS does not force consumers to forego the benefits of these efficiencies.

II. PCS SHOULD BE BROADLY DEFINED TO PERMIT MAXIMUM AND EFFICIENT UTILIZATION OF PCS-ASSIGNED SPECTRUM.

CTIA fully supports the Commission's tentative adoption of an expansive definition of PCS. In the initial Notice of Inquiry,² Policy Statement and Order,³ and the pending Notice,⁴ the Commission has consistently portrayed PCS as a broad-based "family" of services. Id. CTIA believes that PCS is best defined as "personal communications spectrum," not service.

No one really knows what form PCS will take initially or, more importantly, what it may ultimately become. Various industry proponents have depicted PCS alternatively as the next generation of cordless telephone technology, or the replacement for the local loop, or the natural outgrowth of existing cellular systems, or location-independent multi-media and

2 Notice of Inquiry, 5 F.C.C. Rcd 3995, 3995 (1990) ("PCSs encompass a broad range of radio communications services....").

3 Policy Statement and Order, 6 F.C.C. Rcd 6601, 6601 (1991) ("The Commission intends to broadly define personal communications services and make available an adequate amount of spectrum to foster the development of innovative and competitive markets for these services.").

4 Notice, 7 F.C.C. Rcd at 5689 ("[W]e propose that personal communications services be defined as a family of mobile or portable radio communications services which could provide services to individuals and business, and be integrated with a wide variety of competing networks.").

high-speed data services. Fundamentally, it cannot be known which of these visions will crystallize, let alone the ones that have yet to be imagined.⁵ In such an unsettled landscape, the Commission cannot divine how PCS will develop, or which services reflect the highest valued use of spectrum.

Accordingly, the regulatory policy adopted must not prematurely hamper PCS growth by assuming a particular outcome or dictating a particular vision of PCS. Rather, to ensure that a "good" outcome will occur regardless of how PCS develops the best policy is one that is adaptable to changing circumstances. Under such a policy, the Commission would assign spectrum to multiple qualified operators, without exclusion or preference, and then allow the personal communications "market" to determine, in response to consumer demand, what services will be offered, by whom, using the most appropriate technologies and time frames.

The Notice proposes to define PCS broadly and to permit PCS-assigned spectrum to be utilized for a variety of services. Two exceptions are provided for: broadcasting and fixed services (which the Commission proposes to be allowed on an ancillary-only basis). CTIA believes that the Commission should allow PCS spectrum to be utilized as broadly as

⁵ The Commission correctly identified the amorphous nature of PCS in the Notice when it observed that "PCS is, of course, evolving and it is likely that a variety of services will be offered under the rubric of PCS. . . ." Notice, 7 F.C.C. Rcd at 5714.

possible, that is, circumscribed only by the legal limits on the Commission's authority. As explained below, the only apparent limitation on the Commission's legal authority is allowing broadcasting uses. Thus, CTIA believes that all services other than broadcasting should be allowed, without qualification as to their "ancillary" or primary status. As a matter of policy and law, this broad approach will best promote consumer interests.

A. Narrow Definitions of PCS will Artificially Constrain Output.

Any a priori attempt to define PCS at this time jeopardizes the efficient development of PCS itself. Restricting PCS-assigned spectrum to regulatorily-defined services could seriously impair the very efficiencies the Notice seeks to promote. The Commission has long recognized that the market can best determine how and where resources -- including especially scarce spectrum -- are efficiently employed. Deliberately and consistently, the Commission has eschewed regulations that might impede full utilization of facilities.

The cellular regulatory experience provides a noteworthy example of the Commission's removal of output restrictions to facilitate efficient utilization of spectrum. In its early stages, the cellular industry was subject to detailed technical and compatibility standards that limited unnecessarily the range of services cellular carriers could

offer. Thereafter, the Commission liberalized the cellular rules. It relaxed significantly technical standards and permitted cellular operators greater flexibility to use a portion of assigned frequencies to implement advanced cellular technologies and auxiliary common carrier services on a secondary basis.⁶

The Commission has systematically removed output restrictions on licensees in other service areas, including FM

⁶ Liberalization of Technology and Auxiliary Service Offerings in Domestic Public Cellular Radio Telecommunications Services, Report and Order, 3 F.C.C. Rcd 7033 (1988); Memorandum Opinion and Order, 5 F.C.C. Rcd 1138 (1990)(hereinafter, Flexible Cellular Order). As discussed infra, CTIA believes that further relaxation, for both cellular and PCS spectrum, is warranted.

radio,⁷ AM radio,⁸ TV broadcasting,⁹ and other areas.¹⁰ The elimination of output restrictions has been prevalent in the

-
- 7 Subsidiary Communications Authorization, 50 R.R. 2d 1169 (1982)(authorized commercial FM stations to use subcarrier channel for utility load management); FM Subsidiary Communications Authorization, 48 Fed. Reg. 28445 (1983) (further expanded allowed uses of FM subcarrier channel to include an unlimited number of other broadcast, private radio and common carrier services, such as paging, dispatch, and data and facsimile transmission); Commercial Use of Public SCAs, 54 R.R.2d 25 (1983)(afforded noncommercial FM stations the ability to provide same broad array of services as commercial stations).
- 8 Use of the AM Carrier, 49 Fed. Reg. 34011 (1984)(authorized AM stations to transmit paging and dispatch signals, data information, and other information unrelated to broadcasting services, as well as AM stereo).
- 9 TV Aural Broadcast Subcarrier Frequencies, 40 Fed. Reg. 18100 (1984)(permitted audio subcarrier of TV signals to carry stereo and bilingual language broadcasts, and signals for other purposes); Teletext Transmission, 53 R.R.2d 1309 (1983)(authorized TV signals to transmit teletext in the vertical blanking interval (VBI)); Teletext Transmission, 101 F.C.C.2d 827 (1985) rev'd and remanded on other grounds, TRAC v. F.C.C., 801 F.2d 501 (1986) (permitted public TV stations to provide panoply of VBI services for a profit); TV Vertical Blanking Interval Data Transmission Services, 101 F.C.C.2d 973 (1985)(expanded uses of VBI to include non-teletext services such as data transmission, computer software delivery, and paging); Mass Media Action, FCC Release 92-479 (1992)(suspended restrictions on VBI line 19 to facilitate broader range of uses).

The Commission's VBI decisions are particularly instructive regarding PCS regulatory considerations. In

(Footnote continued on page 11)

- 10 See, e.g., Further Sharing of the UHF Television Band by Private Land Mobile Radio Services, 50 Fed. Reg. 25587

(Footnote continued on page 11)

private land mobile services,¹¹ as well, particularly in the Specialized Mobile Radio (SMR) service.¹²

9 (Footnote continued)

those decisions, the Commission realized that, like PCS, teletext technology had the potential for "many diverse and varied applications." 53 R.R.2d at 1331. To avoid constraining any of these applications, the Commission adopted an "open market regulatory approach" which relied on the forces of competition to "direct the production and employment of resources to meet diverse user needs and preferences." Id. at 1321.

10 (Footnote continued)

(1985)(proposed establishment of flexible radio service allowing licensees to offer any technically feasible communications service they desire; proceeding suspended pending decision in the ATV inquiry. Order, 2 F.C.C. Rcd 6441 (1987)). See also Authorization of Private Carrier Systems in the Private OFS Service, 57 R.R. 2d 1486 (1985)(authorized OFS operators to lease excess spectrum for a profit). In the OFS Order the Commission noted that:

The Commission has long been concerned with regulations which impede rather than promote development of the full potential for the efficient and effective use of the radio spectrum. Id. at 1500.

11 See, e.g., Permissible Communications Restrictions, Private Land Mobile Radio Service, 57 R.R.2d 1015 (1985)(removed restrictions on permissible content of licensee communications on exclusive private land mobile channels).

12 See, e.g., Amendment of Part 90, Subparts M and S, of the Commission's Rules, 3 F.C.C. Rcd 1838 (1988); recon. 4 F.C.C. Rcd 356 (1989)(established new regulatory framework for SMR that eliminated eligibility and output restrictions and championed licensee flexibility to promote full utilization of spectrum). The Commission stated that its regulatory overhaul of the SMR industry there was intended to:

(Footnote continued on page 12)

The Commission has also acted to urge the removal of output restrictions imposed outside its own regulatory scheme.¹³

The Commission should take heed of its extensive efforts to eliminate output restrictions and, accordingly, resist attempts to more narrowly confine the potential for PCS. In this regard, the Notice's tentative proposal to relegate fixed PCS services to an ancillary status is too restrictive. In recent years, the Commission has progressively relaxed its rules restricting mobile radio licensees to mobile-only services. The Commission's rulings on Basic Exchange Telecommunications Radio Services (BETRS) are particularly instructive on this point. In its Flexible Cellular Order, the Commission authorized cellular operators to provide BETRS as a

12 (Footnote continued)

grant licensees the maximum amount of flexibility to manage their systems, consistent with our regulatory objectives of ensuring efficient use of the spectrum, increasing service options to end users, and fostering a competitive SMR industry.

3 F.C.C. Rcd at 1847.

13 See, e.g., Commission Responsive Comments Concerning the Information Services Restriction, filed in United States v. Western Electric, CA 82-0192, at 4 (D.D.C. Nov. 17, 1987)(arguing for the removal of the MFJ's prohibition on BOC-provided information services, so as to allow the BOCs the "freedom and flexibility to design and utilize their networks to their fullest capabilities").

fixed service under its rules.¹⁴ On reconsideration, the Commission relaxed the filing requirements associated with the provision of incidental fixed cellular services under Section 22.308 and BETRS under Section 22.930.¹⁵ More recently, the Commission proposed to eliminate the restriction limiting the cellular provision of fixed services to BETRS.¹⁶ The Commission noted that this restriction is no longer necessary, since waivers permitting cellular operators to provide incidental fixed services are routinely granted.¹⁷

Moreover, the Notice itself, in its proposal to allow LECs to acquire PCS spectrum in their service areas to replace wireline connections with wireless tails and wireless loops, contemplates the use of PCS spectrum for fixed services. Notice at 5705-06. Other fixed services, such as wireless LANs and PBXs, are also anticipated in the Notice. Notice at 5678. Relegating fixed services to ancillary status is unwise given these potential efficient uses of PCS-assigned spectrum

¹⁴ Flexible Cellular Order, 3 F.C.C. Rcd at 7041.

¹⁵ Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service, 5 F.C.C. Rcd 1138 (1990).

¹⁶ Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, 7 F.C.C. Rcd 3658, 3672 (1992).

¹⁷ Id.

together with the benefits this spectrum will provide to consumers.¹⁸

B. A Broad Definitional Approach Is Fully Within the Commission's Legal Authority.

The Commission's legal authority to adopt such a broad definitional approach for PCS is well established. The Commission has broad licensing discretion under the Communications Act, as amended (the "Act"), including the authority to allocate a flexible definitional and use scheme for PCS spectrum which permits market forces to determine the range of services ultimately to be offered.¹⁹ The Act itself

¹⁸ A recent CBO study observed that should Congress authorize and the Commission adopt auctioning of new spectrum licenses, a flexible regulatory policy such as the one proposed in these comments by CTIA would increase government revenues received from such auctions. Auctioning Radio Spectrum Licenses: A CBO Study, at xiii (March, 1992). By imparting to new licensees a "spectrum management right," whereby the frequencies controlled could be used for any purpose subject only to interference limitations, and could be sublet to third parties or subdivided by use or geographic region, potential licensees would have greater incentives to bid aggressively for this spectrum. Conversely, "imposing restrictions on a licensee will decrease revenue because winning bidders will be more limited in the strategies they can apply to achieve profitability." Id.

¹⁹ Controversies over "public trustee" obligations in the broadcast licensing scheme which have precluded to date a marketplace approach to spectrum licensing and allocation are not relevant to the non-broadcast services in issue here. See generally, Comment, Allocating Spectrum by Market Forces: The FCC Ultra Vires?, 37 Cath. U.L. Rev. 149 (1987). But see Fowler and Brenner, A Marketplace

(Footnote continued on page 15)

provides the Commission with only the most general guidelines for managing spectrum.²⁰ Title I commands the agency to regulate "so as to make available...a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges. . . ."21 Title III of the Act, which authorizes the Commission to allocate and assign radio spectrum, requires only that the Commission find that the "public convenience, interest or necessity" is served by a particular apportionment of spectrum.²² Section 303(g) further requires the Commission to "generally encourage the larger and more effective use of radio in the public interest."

19 (Footnote continued)

Approach to Broadcast Regulation, 60 Tex. L. Lev. 207 (1982)(arguing for a marketplace approach to broadcast regulation versus the public trustee model).

20 Section 332 of the Act, 47 U.S.C. § 332 (1992), to the extent applicable, contains more specific guidelines for managing private land mobile spectrum. Section 332(a) instructs the Commission, in managing this spectrum, to consider whether its actions will "promote safety, improve spectrum efficiency, reduce the users' regulatory burden, encourage competition, provide services to the largest number of users, or increase interservice sharing opportunities." See H.R. Conf. Rep. No. 765, 97th Cong., 2nd Sess. 52 (1982), reprinted in 1982 U.S. Code Cong. & Admin. News 2261, 2296. See also Telocator Network of America v. F.C.C., 761 F.2d 763, 768 (D.C. Cir. 1985).

21 47 U.S.C. § 151 (1992).

22 47 U.S.C. § 303 (1992). See generally, National Telecommunications and Information Administration, U.S. Spectrum Management Policy: An Agenda for the Future, 18-19 (1991).

The Act itself, of course, does not define the "public interest"; instead, it affords the Commission broad discretion to determine what is in the public interest. The Commission is entitled to "implement its view of the public interest standard . . . 'so long as that view is based on consideration of permissible factors and is otherwise reasonable.'"²³

Adoption of the Notice's proposal to define PCS more by exclusion (that is, it is not "broadcasting") is thus well within the Commission's authority. Plainly, it would be contrary to the public interest at this time to define PCS more narrowly and thereby potentially preclude efficient utilization of PCS facilities and spectrum. Where unnecessary limitations on output have been identified, the Commission has found the requisite statutory authority to remove them. See Amendments of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, et. al., 2 F.C.C. Rcd 1825, 1839-1840 (1986), recon., 2 F.C.C. Rcd 6830 (1987) (Rejecting arguments that flexible allocation is barred by sections 303 (a)-(c), in fact, "permitting mobile service licensees broader service options in this spectrum is consistent with the public interest."); Flexible Allocation of Frequencies in the Domestic Public Land Mobile Services for Paging and Other Services, 4 F.C.C. Rcd 1576, 1580 (1989) (The Commission remains "within

²³ See F.C.C. v. WNCN Listeners Guild, 450 U.S. 582, 593-594 (1981); see also NTIA Spectrum Management Report, Id.

the parameters of the Communications Act by . . . permitting flexible choice of service offerings within the class of stations identified as mobile common carriers)."24

The only apparent limitation relevant to the potential use of PCS spectrum is that it may not be used for broadcasting service. Under the current International Table of Frequency Allocations, 2 GHz spectrum is not designated for broadcast use. Subject only to this limitation, the Commission is legally competent to allow PCS licensees to respond to consumer demand and technical efficiency considerations.

C. All Comparable Restrictions on Permissible Services in the Cellular Bands Should be Lifted.

The adoption of a broad definition for PCS should be accompanied by a corresponding review to permit the same flexible use of cellular-assigned spectrum. CTIA thus supports the Notice's proposals to further liberalize Section 22.930 to state explicitly that cellular licensees may provide PCS-type services in their existing frequencies and to remove all notification requirements. Whether or not PCS and cellular

24 Compare N.A.B. v. F.C.C., 740 F.2d 1190, 1200-1201 (D.C. Cir. 1984) (Commission's discretion to flexibly regulate new technologies, such as DBS, on an experimental basis by exempting customer-programmers from Title III regulation, "is not boundless: the Commission has no authority to experiment with its statutory obligations") with N.A.B.B v. F.C.C., 849 F.2d 665 (D.C. Cir. 1988) (under the principles of Chevron, the court must defer to the Commission's reclassification of DBS as non-broadcasting service).

services are reasonably substitutable, the increased efficiency in spectrum utilization is sufficient reason for such action.

Moreover, PCS utilization of cellular spectrum will permit scale and scope efficiencies to be captured. As discussed in detail in section V, infra, CTIA believes there are substantial economies to be exploited in the joint provision of PCS and cellular. However, and as discussed infra, the severe limitations on the availability of cellular spectrum for new services require that cellular carriers be afforded access to PCS-licensed spectrum as well.

As noted above, previous decisions have afforded cellular licensees considerable flexibility in their use of spectrum. The Flexible Cellular Order allowed cellular licensees to deploy advanced technologies and provide auxiliary common carrier services on a secondary basis, without prior Commission authorization.²⁵ In May 1992, the Commission proposed to further relax cellular rules in a number of ways, including elimination of the restriction limiting fixed service to Basic Exchange Telecommunications Radio Systems (BETRS).²⁶ While the Notice states that "cellular licensees are permitted

²⁵ Flexible Cellular Order, at 7035. The Commission cited a number of public interest reasons for liberalizing its cellular rules, most notably its belief that "cellular operators and the public could benefit if additional services could be provided in the cellular spectrum." Id.

²⁶ Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, 7 F.C.C. Rcd 3658, 3672 (1992).

to provide a broad range of services beyond cellular radio telephone services, including many of the kinds of services envisioned for PCS,"²⁷ there nevertheless remain some ambiguities and restrictions. CTIA therefore urges the Commission to codify in its rules the ability of cellular licensees to provide PCS in their existing spectrum, and to remove any and all restrictions which impede such offerings. These include both the ambiguous aspects of BETRS limitations as well as prior notification requirements.

Cellular providers' ability to offer PCS in cellular spectrum would redound to consumers' benefit. First, the ability to provide PCS in cellular spectrum will give cellular operators incentives to make more efficient use of this spectrum: The more efficiently the cellular operator can satisfy its obligations to conventional cellular customers, the more spectrum will be made available for the provision of PCS services. The Commission has previously acted on this "increased efficiency" rationale in its Flexible Cellular Order:

[T]he extent to which auxiliary services may be offered to increase revenues will be determined by how efficiently the cellular operator can satisfy cellular demand.²⁸

Finally, while the Notice acknowledges that Telocator has petitioned the Commission to expand cellular flexibility

²⁷ Notice, 7 F.C.C. Rcd at 5704.

²⁸ Flexible Cellular Order, at 7041.

still further to permit new non-common carrier services,²⁹ it proposes to address this regulatory issue separately. CTIA has endorsed Telocator's petition,³⁰ and urges the Commission to address the issue of cellular provision of non-common carrier services in this proceeding. The issue of PCS's regulatory status is inextricably tied to the issue of whether cellular providers should be authorized to offer non-common carrier services. If, for example, the Commission authorizes cellular licensees to provide PCS in existing spectrum and also decides to regulate PCS as a private carrier, then Telocator's petition will be effectively granted. Therefore, it would be most efficient for the Commission to expressly resolve both issues in tandem in this proceeding.

III. SPECTRUM ALLOCATION SCHEME.

A. The Use of 2 GHz Spectrum for PCS Is Appropriate.

CTIA supports the Commission's proposal to utilize spectrum in the 2 GHz band to allocate to PCS. Recognizing the potential costs of relocating existing 2 GHz users, the Commission has recently sought ways to strike an appropriate balance between the public interest in new technologies and the

²⁹ Notice, 7 F.C.C. Rcd at 5704 n.49 (citing Petition for Rule Making by Telocator to Amend the Commission's Rules to Authorize Cellular Carriers to Offer Auxiliary and Non-Common Carrier Services, RM-7823, filed on Sept. 4, 1991).

³⁰ CTIA Comments in Support of Telocator Petition (Nov. 12, 1991).